
OLR Bill Analysis

sHB 5489 (as amended by House "A")*

AN ACT CONCERNING THE ABATEMENT OF A PUBLIC NUISANCE AND CRIMINAL LOCKOUT.

SUMMARY:

This bill adds additional crimes, as well as certain municipal ordinance violations, to the public nuisance abatement statutes and broadens the circumstances in which the law applies.

The current nuisance abatement law allows the state to file civil suits seeking various forms of relief when there are three or more arrests, or three or more arrest warrants indicating a pattern of criminal activity, for certain offenses at a property within one year. The bill also allows the state to file such suits when three or more citations have been issued for violations of certain types of municipal ordinances. Among other things, the nuisance abatement law allows courts to order the property closed until the nuisance is eliminated.

The bill makes other changes to the nuisance abatement statutes. It lowers the state's burden of proof in nuisance abatement evidentiary hearings, from clear and convincing evidence (meaning it is highly probable or reasonably certain that facts are true) to a preponderance of the evidence (it is more likely than not that facts are true). By law, if the state meets its burden at such hearings, there is a rebuttable presumption in its favor. Defendants can offer an affirmative defense that they took reasonable steps to stop the nuisance but were unable to do so.

The bill expands the circumstances in which the state can make a financial institution (e.g., a bank with a mortgage on the property) a defendant in a nuisance abatement action. It also lowers the state's burden to prove that a financial institution with an interest of record in a property had criminal responsibility for nuisances occurring at the

property.

The bill expands the crime of criminal lockout to include nonresidential tenants within its protections, and increases the penalty for the crime.

The bill also makes technical and conforming changes.

*House Amendment "A":

1. allows the state to bring a nuisance abatement action for three or more citations for certain violations of municipal ordinances;
2. deletes provisions in the original file that added to the nuisance abatement statutes (a) breach of the peace from activity on nonresidential property that significantly impacts the surrounding area's safety and (b) sale or delivery of alcohol to a minor;
3. narrows another provision to citations involving illegal operation of massage-oriented businesses rather than any adult-oriented businesses that impact safety; and
4. makes minor, technical, and conforming changes.

EFFECTIVE DATE: January 1, 2013

PUBLIC NUISANCES

Applicable Crimes and Violations

The bill adds to the public nuisance statutes (1) sale or delivery of alcohol to an intoxicated person or habitual drunkard and (2) 3rd degree assault (the law already includes various other degrees of assault). It also adds to the nuisance abatement law the following violations of municipal ordinances that result in citations:

1. excessive noise on nonresidential property that significantly impacts the surrounding area;
2. owning or leasing a dwelling unit where an excessive number of

unrelated people live, resulting in dangerous or unsanitary conditions that significantly impact the surrounding area's safety; or

3. impermissible operation of a (a) business that allows unlicensed people to practice massage therapy or (b) massage parlor (as defined in the ordinance) that significantly impacts the surrounding area's safety.

The law already includes the following offenses in the public nuisance statutes:

1. prostitution;
2. promoting an obscene performance or obscene material, employing a minor in an obscene performance, or importing or possessing child pornography;
3. transmitting gambling information or maintaining gambling premises;
4. selling, possessing with intent to sell, or producing illegal drugs;
5. selling liquor illegally, or disposing of liquor without a permit;
6. running a motor vehicle chop shop;
7. inciting injury to persons or property;
8. murder or manslaughter;
9. assault;
10. sexual assault; and
11. fire safety violations.

Under current law, a person creates or maintains a public nuisance when the person erects, establishes, maintains, uses, owns, or leases any building or place for purposes of any of the listed offenses. The bill

expands the law to apply to such actions at a property (1) on which any of the listed offenses have occurred (including those added by the bill) or (2) for purposes of the first six categories of crimes in the list of existing offenses (e.g., using a building for purposes of prostitution or illegal liquor sales).

Financial Institution Defendants

By law, courts may not issue a public nuisance abatement order against a financial institution that (1) owns the property or (2) has an interest of record in it (under a mortgage, assignment of lease or rent, lien, or security interest) and is not found to be a principal or accomplice to the conduct constituting the nuisance. "Financial institutions" for this purpose include banks, out-of-state banks, and institutional lenders and their subsidiaries and affiliates that directly or indirectly acquire a property through foreclosure proceedings and intend to re-sell it, or other lenders licensed by the Banking Department.

The bill requires the state to prove by a preponderance of the evidence, rather than by the stricter clear and convincing evidence, that such an institution claiming an interest of record in the property as specified above was a principal or accomplice to the alleged conduct. It specifies that such defendants can offer an affirmative defense, which they must prove by a preponderance of the evidence, that they have taken reasonable steps to abate the nuisance, but were unable to do so.

The bill also allows courts to issue nuisance abatement orders against financial institutions that own or claim an interest of record in a property where a nuisance occurred, if the institution (1) knew about the nuisance, or should have known about it by exercising reasonable diligence and (2) did not try to abate it before the state brought the case.

CRIMINAL LOCKOUT

Under current law, it is a class C misdemeanor for a landlord, unit owner, or one of their agents to prevent a residential tenant from

gaining access to the rented dwelling unit or his or her personal possessions, unless the action is taken pursuant to a court order.

The bill expands this crime to include such actions against nonresidential tenants. It also increases the maximum penalty for the crime by making it a class B misdemeanor. Class B misdemeanors are punishable by up to six months' imprisonment, up to a \$1,000 fine, or both. Class C misdemeanors are punishable by up to three months' imprisonment, up to a \$500 fine, or both.

BACKGROUND

3rd Degree Assault

By law, a person commits 3rd degree assault when he or she (1) with intent to cause physical injury to another person, causes such injury to that person or to a third person; (2) recklessly causes serious physical injury to another person; or (3) with criminal negligence, causes physical injury to another person by means of a deadly weapon, dangerous instrument, or electronic defense weapon (CGS § 53a-61).

Sanctions for Public Nuisance

The law authorizes various types of temporary and permanent relief in public nuisance abatement actions. For example, the state can apply for a temporary "ex parte" order when its sworn complaint and affidavit show that the nuisance poses a danger to the public health, welfare, or safety. Within specified time frames after issuing such an order, the court must hold a hearing to decide whether the order remains in place or whether other temporary orders should be entered.

The court can appoint a receiver to manage and operate the property while a nuisance action is pending. Among other things, the court can also (1) order the closing of the property or some part of it; (2) authorize the state to bring the property into compliance with state and local building, fire, health, housing, or similar codes, and order the defendant to pay the costs; and (3) impose civil fines or imprisonment for certain intentional violations. The court maintains ongoing jurisdiction until it appears the nuisance no longer exists (CGS § 19a-343 et seq.).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/02/2012)